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A human rights-based approach to corruption

Corruption is one of the major reasons people are denied the full enjoyment of the rights enshrined in UN human rights treaties, whether political and civil or economic, social and cultural rights.[1] This may happen when corruption undermines justice or electoral systems or results in denial of life or liberty or freedom of expression, association and assembly. It may also happen when corruption blocks economic, social or cultural rights, for example through diminishing the resources available for public services. Thus, the fight against corruption can have positive effects on the realization of human rights. At the same time, the promotion of human rights can also help prevent and detect corruption. For example, journalists and others can facilitate public access to information to uncover corruption and use freedom of expression to reveal and denounce corrupt practices; and citizens can challenge in impartial tribunals corrupt decisions that affect their lives.

The UNCAC does not mention the words "human rights" in its text although there are allusions to some of those rights in language in the preamble and articles.[2] UNODC's website says the following about UNCAC and human rights:

The UNCAC recognizes principles such as integrity, accountability, transparency and the right to information, all of which reinforces the practical application and respect for human rights. Moreover, by requiring States parties to take measures to strengthen judicial integrity and to prevent opportunities for corruption among members of the judiciary and the prosecution service, the Convention, consistent with human rights law, requires States parties to strengthen integrity standards as a key to prevent and counter corruption. UNCAC also sets out specific requirements to protect persons reporting, in good faith, about corruption

UNCAC discussions and resolutions occasionally reference human rights. At the 4th session of the UNCAC Conference of States Parties (CoSP) in 2011, the Office of the High Commissioner for Human Rights delivered a speech on Human Rights and the Fight against Corruption[3] At the 6th UNCAC Conference of States Parties in 2015, the Bolivian Embassy in Switzerland organized a side event on best practices in combating corruption and its impact on the enjoyment of human rights.

Human rights have been mentioned in four CoSP resolutions, in three at the 6th CoSP and in one at the 7th CoSP, as follows:

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[1] International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child, and other.

[2] For example, the first paragraph of its Preamble expresses concern about "*the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law...*" Article 11 refers to the independence of the judiciary and Article 13 calls for "*Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption...*"

[3] https://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Statements/OHCHRStatementMorocco27Oct2011.pdf.

- UNCAC CoSP Resolution 6/6 included in its preamble the wording "*Stressing* that preventive measures are one of the most effective means of countering corruption and of avoiding its negative impact on the enjoyment of human rights…"
- UNCAC CoSP Resolution 6/8 included the language: *Concerned also* about the negative impact of widespread corruption on the enjoyment of human rights, and recognizing that corruption constitutes one of the obstacles to the effective promotion and protection of human rights and fundamental freedoms,
- UNCAC CoSP Resolution 6/10 stated: *Recalling* Human Rights Council resolution 29/11 of 2 July 2015, entitled "The negative impact of corruption on the enjoyment of human rights", in which the Council recognized that the negative impact of corruption on human rights and sustainable development could be combated through anti-corruption education and noted with appreciation the capacity-building activities and specialized curricula developed by relevant institutions. This resolution also mentioned human rights twice in its operative paragraphs.
- UNCAC CoSP Resolution 7/2 recalled General Assembly resolution 71/208 of 19 December 2016, expressed concern about the negative impact that corruption can have on the enjoyment of human rights.[4]

However UNCAC forums have not attempted any in-depth examination of the connections between corruption and human rights.

There has been far more attention to this subject at the UN in Geneva. In 1991, the former Sub-Commission on the Prevention of Discrimination and Protection of Minorities took up this issue and discussed the problem of capital flight and fraudulent enrichment of high-ranking State officials, which led to the adoption of a Commission on Human Rights resolution in 1992 entitled "Fraudulent enrichment of top State officials prejudicial to the public interest, the factors responsible for it, and the agents involved in all countries in such fraudulent enrichment." United Nations human rights bodies have been concerned with the issue of corruption and its impact on human rights ever since. The Human Rights Sub-Commission's appointed for 2003-2006 a Special Rapporteur on corruption and its impact on the full enjoyment of human rights. In June 2013, the Human Rights Council adopted a resolution on the negative impact of corruption on the enjoyment of human rights[5] and in March 2017, it adopted a resolution on the negative impact of the non-repatriation of funds of illicit origin on the enjoyment of human rights.[6]

There have also been studies relating to corruption and human rights by UNOHCHR and other UN Geneva human rights instances including:

- UNOHCHR, Best practices to counter the negative impact of corruption on the enjoyment of all human rights (April 2016)[7]
- Independent Expert on effects of foreign debt etc. on the full enjoyment of human rights, Report on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development (January 2016)[8]
- UN HRC AC, Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights (January 2015)[9]
    - UNODC, Response to questionnaire on the negative impact of corruption on the enjoyment of human rights[10]

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[4] http://undocs.org/A/RES/71/208.

[5] https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/149/72/PDF/G1314972.pdf?OpenElement.

[6] https://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/NegativeImpactNonRepatriationFundsIllicitOrigin.aspx.

[7] http://undocs.org/A/HRC/32/22.

[8] https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/Consultation.aspx.

[9] https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_74_en.doc.

[10] https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/

  - UN OHCHR, Response to questionnaire on the negative impact of corruption on the enjoyment of human rights[11]
- Special Rapporteur on the independence of judges and lawyers, Report addressing two aspects of the phenomenon of corruption: judicial corruption; and combating corruption through the judicial system (August 2012)[12]
- UN OHCHR, Comprehensive study on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, in particular economic, social and cultural rights (December 2011)[13]

Moreover, international human rights treaty bodies and mechanisms, including the Human Rights Council, have paid increasing attention in country reviews to the negative impact of corruption and made numerous recommendations to Member States with the aim of preventing and suppressing corruption. The Committee on Economic Social and Cultural Rights frequently includes a section on corruption in its Concluding Observations to State parties after the dialogue with the country concerned.

From a civil society perspective, numerous questions arise, including:

- What are the human rights implications of grand corruption and small-scale corruption?
- What are the specific human rights issues in relation to asset recovery?
- What are the common tools used for protection of human rights and fighting corruption and how can they be enhanced in light of their use in both areas? How can overlaps be leveraged?
- What are good practices in this area?
- What kind of joint discussions, activity and mechanisms should link UN work on corruption in Vienna and Geneva?

To advance discussion of these issues, the UNCAC Coalition is co-organizing with Transparency International a **Special Event** entitled **"A human rights-based approach to corruption"** on Thursday, 6 September 2018, from 13:30 – 15:00 at the UN Vienna (room M7).

HRCouncil/AdvisoryCom/Corruption/UNODC.doc&action=default&DefaultItemOpen=1.

[11] https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf.

[12] http://undocs.org/A/67/305.

[13] https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-42_en.pdf.